

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

KEVIN RAYE FANNING,

Petitioner,

v.

RICK COURSEY,

Respondent.

No. 3:10-cv-01566-HU

OPINION AND ORDER

MOSMAN, J.,

On January 17, 2013, Magistrate Judge Hubel issued his Findings and Recommendation (“F&R”) [45] in the above-captioned case, recommending that the Amended Petition for Writ of Habeas Corpus [6] be denied as untimely and that a judgment be entered dismissing this case with prejudice. Judge Hubel also recommended that I decline to issue a Certificate of Appealability on the basis that petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2). Petitioner objected [47]. Respondent did not respond to petitioner’s objections.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge,

but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Hubel's recommendation, and I ADOPT the F&R [45] as my own opinion.

IT IS SO ORDERED.

DATED this 14th day of March, 2013.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Judge